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GOVERNMENT OF GOA

Department of Finance

Office of the Commissioner of Commercial Taxes

CCT/26-4/2017-18/E/2183

Circular

(No. 16/2021-22-GST)

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow-reg.

Based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:

- i. Fresh vs dried fruits and nuts;
- ii. Classification and applicable GST rates on Tamarind seeds;
- iii. Coconut vs Copra;
- iv. Classification and applicable GST rate on Pure *henna* powder and leaves, having no additives;
- v. Scented sweet *supari* and flavoured and coated *illaichi*;
- vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;

- vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;
- viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;
- ix. Requirement of Original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;
- x. External batteries sold along with UPS Systems/Inverter;
- xi. Specified Renewable Energy Projects;
- xii. Fiber Drums, whether corrugated or non-corrugated.

2. The issue-wise clarifications are discussed in detail below.

3. Applicability of GST on fresh and dried fruits and nuts:

3.1 Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

3.2 At present, fresh nuts (almond, walnut, hazelnut, pistachio etc.) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/12%. The general Explanatory Notes to Chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be **fresh (including chilled)**, **frozen** (whether or not previously cooked by steaming or boiling in water

or containing added sweetening matter) or **dried (including dehydrated, evaporated or freeze-dried)**. Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

3.3. Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

4. Applicability of GST on tamarind seeds:

4.1 Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

4.2 As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as "seeds of a kind used for sowing". Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01-07-2017 to 30-09-2021).

4.3 The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of Schedule I of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 38/1/2017-Fin(R&C) (2/2017-Rate) dated 30-06-2017). Hence, with effect from 1-10-2021, tamarind and other seeds falling under heading 1209 (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

5. Clarification of definition of Copra:

5.1. Representations have been received seeking clarification regarding the definition of Copra and applicable GST rates.

5.2 As per Explanatory Notes to HS (2017 edition) to heading 1203, Copra is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into copra, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to copra. Once taken out of shell, copra could be supplied either whole or broken.

5.3. As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes Copra. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 38/1/2017-Fin(R&C) (2/2017-Rate) dated 30-06-2017, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017, irrespective of use.

6. Applicability of GST on pure henna powder and leaves:

6.1 Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

6.2 As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

6.3 Accordingly, it is clarified that pure *henna* powder and *henna* leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No.78 of schedule I of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017).

6.4. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017).

7. Applicability of GST on scented sweet *supari* & flavored and coated *illaichi*:

7.1 Representations have been received seeking clarification regarding classification and applicable

GST rates on flavoured and coated *illaichi*, and scented sweet *supari*.

7.2 Scented sweet *supari* falls under tariff item 2106 90 30 as "Betel nut product" known as "*Supari*" and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017.

7.3 Flavoured and coated *illaichi* generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from *illaichi* or cardamom (which falls under heading 0908). It is clarified that flavored and coated *illaichi* is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017).

8. Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues:

8.1 Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

8.2 As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beet-pulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses). All these products remain classified in the heading whether presented in wet or dry.

8.3 Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017).

9. Scope of GST rate on all pharmaceutical goods falling under heading 3006.

9.1 Entry at S. No. 65 of Schedule II of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017, reads as "Pharmaceutical goods specified in

Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals][other than contraceptives]".

9.2 S. No. 65 of Second Schedule of Notification 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017.

9.3 Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

- "(a) *sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;*
- (b) *Sterile laminaria and sterile laminaria tents;*
- (c) *sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;*
- (d) *opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;*
- (e) *blood-grouping reagents;*
- (f) *dental cements and other dental fillings; bone reconstruction cements;*
- (g) *first-aid boxes and kits;*
- (h) *chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;*
- (i) *gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and*
- (j) *waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.*

- (k) *appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."*

9.4 Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

10. All laboratory reagents and other goods falling under heading 3822:

10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28-6-2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

10.2. Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

10.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc..".

10.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory reagents, falling under heading 3822.

10.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No. 1/2017-Integrated Tax (Rate) dated 28-6-2017.

11. Requirement of Original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations.

11.1 Notification No. 38/1/2017-Fin(R&C)(3/2017-Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1 (d) in notification No. 38/1/2017-Fin(R&C)(3/2017-Rate) dated 30-06-2017 prescribes that "*whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be produced that the goods may be transferred to the transferee*".

11.2. As per Section 7 read with Schedule-I of the Goa GST Act, 2017, inter-state stock transfer

between distinct persons (establishment of same person located in two different states) is considered as 'supply' of goods.

11.3. Representations have been received seeking clarification whether the original/import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

11.4. GST Council deliberated upon this issue and a decision was taken that the original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company/stock transfer so long as the goods are the same as those imported by the company at concessional rate.

11.5. The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

12. GST rates applicable on External batteries sold along with UPS/System Inverter:

12.1 References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST.

12.2 The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

13. Applicability of GST rates on Solar PV Power Projects.

13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No. 38/1/2017-Fin(R&C)(24/2018-Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value)

may be applied in respect of supplies made before 1-1-2019.

13.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 38/1/2017-Fin(R&C)(11/2017-Rate), dated 30th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

13.3 The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No. 38/1/2017-Fin(R&C)(24/2018-Rate), dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

14. Applicability of GST rates on Fibre Drums, whether corrugated or non-corrugated:

14.1 Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is to be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30-06-2017).

14.2 For the period prior to 1-10-2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1-7-2017 to 30-9-2021), would be treated as fully GST paid. Therefore, no action for

recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

15. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner
State Tax, Goa.

Panaji, 26th November, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 163/19/2021-GST dated 6th October, 2021.

CCT/26-4/2017-18/E/2184

Circular

(No. 17/2021-22-GST)

Subject: Clarifications regarding applicable GST rates & exemptions on certain services-reg.

Representations have been received seeking clarification in respect of applicable GST rates on the following activities:

1. Services by cloud kitchens/central kitchens,
2. Supply of ice cream by ice cream parlors,
3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of "Scholarships for students with Disabilities",
4. Satellite launch services provided by NSIL.
5. Overloading charges at toll plaza,
6. Renting of vehicles by State Transport Undertakings and Local Authorities,
7. Services by way of grant of mineral exploration and mining rights attracted GST,
8. Admission to amusement parks having rides etc.,
9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

2. The issues have been examined by GST Council in the 45th meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:

3. Services by cloud kitchens/central kitchens:

3.1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word “restaurant service” is defined in Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) as below:-

“Restaurant service” means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.”

3.3 The explanatory notes to the classification of service state that “restaurant service” includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service, as defined in notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) and attract 5% GST [without ITC].

4. Supply of ice cream by ice cream parlors:

4.1 Representations have been received requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlors sell already manufactured ice-cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that where ice cream parlors sell already manufactured ice-cream and do not cook/prepare

ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

5. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’

5.1 Representations have been received seeking clarification regarding applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of “Scholarships for students with Disabilities” where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

5.2 In this regard, it is to mention that entry 72 of notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30th June, 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.3 The scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of “Scholarships for students with Disabilities” where total expenditure is borne by the Government by way of funding to institute providing such coaching.

5.4 Accordingly, as recommended by the GST Council, it is clarified that services provided by any institutions/NGOs under the central scheme of “Scholarships for students with Disabilities” where total expenditure is borne by the Government is covered under entry 72 of notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30th June, 2017 and hence exempt from GST.

6. Satellite launch services provided by NSIL.

6.1 Representation has been received for issuance of a clarification recognizing Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as “Export of Service”.

6.2 It has been clarified vide Circular No. 2/1/2017-IGST dated 27-09-2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd. to customers located outside India is outside India and such supply which meets the

requirements of Section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

6.3 As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd., the said circular No. 2/1/2017-IGST dated 27-09-2017, is applicable to them.

7. GST on overloading charges at toll plaza.

7.1 Representations have been received seeking clarification regarding applicability of GST on Overloading charges collected at Toll Plazas.

7.2 Entry 23 of notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30th June, 2017, exempts Service by way of access to a road or a bridge on payment of toll charges road or a bridge on payment of toll charges.

7.3 Vide notification dated 25th Sep., 2018, issued by Ministry of Road Transport and Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges.

7.4 As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

8. Renting of vehicles to State Transport Undertakings and Local Authorities:

8.1 Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30th June, 2017. Sl. No. 22 of this notification exempts "services by way of giving on hire(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers".

8.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

8.3 It is relevant to note in this context that Schedule II of Goa GST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) *refers*]

8.4 The issue was placed before the 45th GST Council Meeting held on 17-09-2021. As recommended by the GST Council, it is clarified that the expression "giving on hire" in Sl. No. 22 of the Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.

9. Services by way of grant of mineral exploration and mining rights:

9.1 Representations have been received requesting for clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1-07-2017 to 31-12-2018. With effect from 1-1-2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.

9.2 For the disputed period [1-7-2017 to 31-12-2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 (licensing services for the right to use minerals including its exploration and evaluation) and attracted, prior to 01-01-2019, the same rate of GST as applicable to minerals, that is, 5% as prescribed against Sl. No.17, item (viii) of Notification No. 38/1/2017-Fin(R&C) (11/2017-Rate). The rate prescribed against this entry prior to 01-01-2019 was "the same rate as applicable on supply of like goods involving transfer of title in goods". In certain other advance rulings, a view has been taken that grant of rights for mineral exploration and mining would be covered under heading 9991 and would attract GST at the rate of 18%.

9.3 AAAR, Odisha, on the other hand has rule vide Order dated 5-11-2019 in the case of M/s Penguin Trading and Agencies Limited that grant of mining lease was taxable @ 18% prior to 01-01-2019. The Appellate Authority in this case observed that GST rate applicable against Sl. No. 17 item (viii) of Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) prior to 01-01-2019 was not implementable. Unlike leasing or renting of goods, there are no underlying goods in case of leasing of mining area. The rate prescribed for goods cannot be made applicable to leasing of mining area, which confers the right to extract and appropriate minerals. The mining lease by Government, not being a lease of any goods, cannot attract the rate applicable to sale of like goods. Appellate Authority for Advance Ruling, Odisha has further held that the amendment carried out vide Notification No. 38/1/2017-Fin(R&C)(27/2018-Rate), dated 31-12-2018, which restricted the "same rate as applicable to supply of goods involving transfer of title in goods" only to leasing or renting of goods was to clarify the legislative intent as well as to resolve the unintended interpretation. It is a settled law that interpretation which defeats the intention of legislature cannot be adopted. It accordingly upheld that "licensing services for the right to use minerals including its exploration and evaluation" falling under service code 997337 were taxable @18% during 01-07-2017 to 31-12-2018.

9.4 It may be noted that the expression "same rate of tax as applicable on supply of like goods involving transfer of title in goods" applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights which is an entirely different activity.

9.4.1 The issue was place before the GST Council in its 45th meeting held on 17-09-2021.

9.5 As regards classification of service, it was recommended by the Council that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. "licensing services for the right to use minerals including its exploration and evaluation".

9.6 As regards the applicable rate for the period from 1-7-2017 to 31-12-2018, the council took note of the following facts, namely,-

- (i) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%.
- (ii) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while

recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%.

- (iii) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%.
- (iv) Therefore, the intention has always been to tax this activity/supply at standard rate of 18%.

9.7 Accordingly, as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1-7-2017 to 31-12-2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above.

10. Admission to indoor amusement parks having rides etc.

10.1 Representations have been received requesting for clarification regarding applicable rate of GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word "amusement park" under entry 34(iii) of Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate).

10.2 Entry 34(iii) notification No.38/1/2017-Fin(R&C)(11/2017-Rate), prior to 01-10-2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iiia) in Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) dated 30-06-2017 prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

10.3 On the recommendations of the Council, it is clarified that 28% rate [entry 34 (iiia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry- go rounds, go-carting etc. whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to Entries 34(iii) and 34 (iiia) as they existed prior to their amendment w.e.f. 01-10-2021.

10.4 The entries in question have been suitably amended vide notification No.38/1/2017-Fin(R&C)(06/2021-Rate)/1913 dated 30-09-2021 to make them clearer.

11. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

11.1 Representations have been received requesting for issuing a clarification that the job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract GST @ 5% prescribed for job work services in relation to food and food products, in terms of Sl. No. 26 [Item 1(i)f] of notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) dated 30-6-2017. This entry prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

11.2 The issue was placed before the GST Council in its 45th meeting held on 17th September, 2021. The Council had also deliberated upon this issue in its 39th and 40th meeting.

11.3 As recommended by GST Council, it is clarified that the expression "food and food products" in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.

12. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner,
State Tax, Goa.

Panaji, 26th November, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 164/20/2021-GST dated 6th October, 2021.

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